

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

RAHEEM M. HAYES,

Plaintiff,

v.

SGT. B. DECICCO, et al.,

Defendants.

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Civil Action No. 10-1528 (NLH)

O P I N I O N

APPEARANCES:

Raheem M. Hayes, Pro Se
149872
Atlantic County Justice Facility
5060 Atlantic Avenue
Mays Landing, NJ 08330

HILLMAN, District Judge

Plaintiff, Raheem M. Hayes, currently confined at the Atlantic County Justice Facility, Mays Landing, New Jersey, has submitted this civil complaint which alleges violations of his constitutional rights, and seeks damages pursuant to 42 U.S.C. § 1983. Plaintiff has not paid the filing fee, and seeks permission to proceed in forma pauperis. Based on Plaintiff's affidavit of indigence, this Court will grant his request.

At this time, the Court must review the complaint to determine whether it should be dismissed as frivolous or malicious, for failure to state a claim upon which relief may be granted, or because it seeks monetary relief from a defendant who

is immune from such relief, pursuant to 28 U.S.C. § 1915(e)(2). For the following reasons, the complaint will be dismissed.

BACKGROUND

Plaintiff seeks to sue three defendants, all employees of the Atlantic County Justice Facility ("ACJF"): Sergeant B. DeCicco; Officer Patrick Robinson; and Sergeant I. Quezergue. He claims that:

On 3/11/10, at Atlantic County Justice Facility I Raheem Hayes was removed from (F. Left) location for my behavior. I was immediately placed in I-Left location, Sgt. B. DeCicco pack[ed] my clothes and my legal work and never gave me my belongings my discovery and everything I need to go to trial with!

(Complaint, ¶ 4). He also states that "they never gave me back my discovery and legal matter pertaining to my case, now I do not have the proper tools to fight my case that I'm being charged with." (Compl., ¶ 3B).

Plaintiff asks for \$100,000 in damages.

DISCUSSION

A. Standard of Review

The Prison Litigation Reform Act ("PLRA"), Pub. L. No. 104-134, § § 801-810, 110 Stat. 1321-66 to 1321-77 (April 26, 1996), requires a district court to review a complaint in a civil action in which a prisoner is proceeding in forma pauperis or seeks redress against a governmental employee or entity. The Court is required to identify cognizable claims and to sua sponte dismiss any claim that is frivolous, malicious, fails to state a claim

upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. See 28 U.S.C. §§ 1915(e)(2)(B) and 1915A. This action is subject to sua sponte screening for dismissal under both 28 U.S.C. §§ 1915(e)(2)(B) and 1915A, because plaintiff is a prisoner and is proceeding as an indigent.

In determining the sufficiency of a pro se complaint, the Court must be mindful to construe it liberally in favor of the plaintiff. See Erickson v. Pardus, 551 U.S. 89, 93-94 (2007) (following Estelle v. Gamble, 429 U.S. 97, 106 (1976) and Haines v. Kerner, 404 U.S. 519, 520-21 (1972)). See also United States v. Day, 969 F.2d 39, 42 (3d Cir. 1992). The Court must "accept as true all of the allegations in the complaint and all reasonable inferences that can be drawn therefrom, and view them in the light most favorable to the plaintiff." Morse v. Lower Merion School Dist., 132 F.3d 902, 906 (3d Cir. 1997). The Court need not, however, credit a pro se plaintiff's "bald assertions" or "legal conclusions." Id.

Recently, the Supreme Court refined this standard for summary dismissal of a complaint that fails to state a claim in Ashcroft v. Iqbal, 129 S. Ct. 1937 (2009). The Court examined Rule 8(a)(2) of the Federal Rules of Civil Procedure which provides that a complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to

relief. See Fed. R. Civ. P. 8(a)(2).¹ Citing its recent opinion in Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007), for the proposition that "[a] pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do,'" Iqbal, 129 S. Ct. at 1949 (quoting Twombly, 550 U.S. at 555), the Supreme Court held that, to prevent a summary dismissal, a civil complaint must now allege "sufficient factual matter" to show that the claim is facially plausible. This then "allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." See id. at 1948. The Supreme Court's ruling in Iqbal emphasizes that a plaintiff must demonstrate that the allegations of his complaint are plausible. See id. at 1949-50; see also Twombly, 550 U.S. at 555, & n.3; Fowler v. UPMC Shadyside, 578 F.3d 203, 2009 WL 2501662, *4 (3d Cir., Aug. 18, 2009).

B. Section 1983 Actions

A plaintiff may have a cause of action under 42 U.S.C. § 1983 for certain violations of his or her constitutional rights. Section 1983 provides in relevant part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory ... subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any

¹ Rule 8(d)(1) provides that "[e]ach allegation must be simple, concise, and direct. No technical form is required." Fed. R. Civ. P. 8(d).

rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress

Thus, to establish a violation of 42 U.S.C. § 1983, a plaintiff must demonstrate that the challenged conduct was committed by (1) a person acting under color of state law and (2) that the conduct deprived him of rights, privileges, or immunities secured by the Constitution or laws of the United States. See Parratt v. Taylor, 451 U.S. 527, 535 (1981), overruled in part on other grounds by Daniels v. Williams, 474 U.S. 327 (1986); Adickes v. S.H. Kress & Co., 398 U.S. 144, 152 (1970); Piecknick v. Pennsylvania, 36 F.3d 1250, 1255-56 (3d Cir. 1994).

C. Plaintiff's Complaint Must Be Dismissed.

1. Clothing Claim

As to Plaintiff's claim that his clothing was taken and not returned, the Court construes this claim as one alleging deprivation of property without due process, in violation of the Fourteenth Amendment.

An unauthorized deprivation of property by a government actor, whether intentional or negligent, does not constitute a violation of the procedural requirements of the Due Process Clause of the Fifth Amendment if a meaningful post-deprivation remedy for the loss is available. See Hudson v. Palmer, 468 U.S. 517, 530-36 (1984) (decided under Due Process Clause of Fourteenth Amendment); Parratt v. Taylor, 451 U.S. 527, 543-44

(1981) (same), overruled in part on other grounds, Daniels v. Williams, 474 U.S. 327, 328 (1986). The institutional grievance procedure provides just such an adequate post-deprivation remedy, even if Plaintiff's personal property was confiscated pursuant to an established policy. See, e.g., Barr v. Knauer, 321 Fed. Appx. 101 (3d Cir. April 10, 2009) (approving post-deprivation grievance remedy following confiscation of electric razor); Tillman v. Lebanon County Corr. Fac., 221 F.3d 410, 422 (3d Cir. 2000) (prison grievance procedure satisfies procedural due process concerns where state must take quick action or where it is impractical to provide meaningful predeprivation process). The existence of the institutional post-deprivation grievance remedy forecloses any due process claim, even if an inmate is dissatisfied with the result of the process. See Iseley v. Horn, 1996 WL 510090, at *6 (E.D. Pa. Sept. 3, 1996). Moreover, New Jersey provides a judicial post-deprivation remedy for unauthorized deprivation of property by public employees. See New Jersey Tort Claims Act, N.J. Stat. Ann. §§ 59:1-1 et seq. (2001). Plaintiff has failed to state a claim for deprivation of personal property without due process. This claim will be dismissed with prejudice.

2. Legal Papers Claim

Plaintiff asserts that defendants confiscated legal materials relating to his criminal case and did not return these

materials. Construing this claim as one for denial of access to courts, the Court notes that under the First and Fourteenth Amendments, prisoners retain a right of access to the courts. See Lewis v. Casey, 518 U.S. 343, 346 (1996); Monroe v. Beard, 536 F.3d 198, 205 (3d Cir. 2008). "Where prisoners assert that defendants' actions have inhibited their opportunity to present a past legal claim, they must show (1) that they suffered an 'actual injury'-that they lost a chance to pursue a 'nonfrivolous' or 'arguable' underlying claim; and (2) that they have no other 'remedy' that may be awarded as recompense' for the lost claim other than in the present denial of access suit." Monroe, 536 F.3d at 205 (quoting Christopher v. Harbury, 536 U.S. 403, 415 (2002)). To establish standing, a prisoner's "complaint must describe the underlying arguable claim well enough to show that it is 'more than mere hope,' and it must describe the 'lost remedy.'" Monroe, 536 F.3d at 205-06 (quoting Harbury, 536 U.S. at 416-17).

The Monroe court affirmed the dismissal of inmates' access to the courts claim for failure to state a claim that was based on the confiscation of legal materials:

[T]he defendants confiscated all of the plaintiffs' ... legal materials, including their legal briefs, transcripts, notes of testimony, exhibits, copies of reference books, treatises, journals, and personal handwritten notes. In their initial pleadings, the plaintiffs' claim rested solely on the ground that the defendants confiscated their legal materials, contraband and non-contraband alike. That claim, on

its face, was insufficient to state a claim under Harbury. So too were their subsequent amendments, which alleged that they lost the opportunity to pursue attacks of their convictions and civil rights claims but did not specify facts demonstrating that the claims were nonfrivolous. Nor did they maintain that they had no other remedy to compensate them for their lost claims. Even liberally construing their complaints as we must do for pro se litigants, they do not sufficiently allege that they have suffered actual injury.

Monroe, 536 F.3d at 206 (cites and footnote omitted). The complaint here suffers the same pleading deficiencies as the complaints in Monroe.² Plaintiff has not demonstrated an "actual injury;" rather, he objects to the confiscation alone.

Furthermore, even assuming, arguendo, that Plaintiff was able to establish that he suffered an actual injury, he would also need to show that he did not have "meaningful" access to the courts in order to establish a constitutional violation. Prison officials must provide inmates with the resources necessary to present valid claims to the judiciary, or adequate alternatives. See Lewis v. Casey, 518 U.S. 343, 349-55 (1996); see also Bounds v. Smith, 430 U.S. 817, 825 (1977), quoted in Lewis, 518 U.S. at 351 (stating that prisoners do not enjoy an "abstract,

² To the extent that Plaintiff raises a due process claim based on the confiscation of his legal materials, that claim is also dismissed. The Monroe court dismissed the inmates' procedural due process claim on the grounds that pre-deprivation notice is not constitutionally required and the prison grievance procedure provided an adequate post-deprivation remedy for the loss. See Monroe, 536 F.3d at 210.

freestanding right to a law library or legal assistance"). Providing the inmate with court-appointed counsel satisfies the requirement of access to courts. See Bounds, 430 U.S. at 828 (holding that providing an inmate with "adequate assistance from persons trained in the law" would satisfy the requirement of access to courts); United States v. Chatman, 584 F.2d 1358, 1360 (4th Cir. 1978) (stating that prisoners do not have the option to choose "the form which [legal] assistance will take").

In this case, Plaintiff has not pled that he was denied meaningful access to courts. It is presumed that Plaintiff had the assistance of counsel at his criminal trial, thereby providing him with meaningful access to the courts.

Therefore, Plaintiff's claims must be dismissed, pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii). Because Plaintiff may be able to correct these pleading deficiencies, the dismissal of Plaintiff's claims concerning access to courts and his legal papers will be without prejudice to the filing of an amended complaint within 30 days. See Grayson v. Mayview State Hosp., 293 F.3d 103, 108 (3d Cir. 2002).

CONCLUSION

For the reasons set forth above, Plaintiff's claims will be dismissed for failure to state a claim upon which relief may be granted, pursuant to 28 U.S.C. § 1915(e)(2).

An appropriate order accompanies this opinion.

/s/ NOEL L. HILLMAN
NOEL L. HILLMAN
United States District Judge

At Camden, New Jersey

Dated: **NOVEMBER 30, 2010**